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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,748	10/10/2001	Mark E. Phillips	480180.403	9401
22504 7590 03/15/2007 DAVIS WRIGHT TREMAINE, LLP 2600 CENTURY SQUARE 1501 FOURTH AVENUE SEATTLE, WA 98101-1688			EXAMINER FLETCHER, MARLON T	
			ART UNIT	PAPER NUMBER
			2837	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/15/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/975,748

Applicant(s)

PHILLIPS ET AL.

Examiner

Marlon T. Fletcher

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-20 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Winsky et al. (5,739,451).

As recited in claims 1, 12, and 18, Winsky et al. disclose a method and system for the display and control of music selection in a handheld portable multi-media device, the system comprising: a housing (12) sized to be held by a user as disclosed in the abstract and as seen in figure 1; a circuit board (figure 3) within the housing; a battery power supply to provide electrical power to electrical circuitry on the circuit board as is inherent in view of figures 1 and 3; a data structure (44) to store a plurality of music data files, each music selection data file having identification data associated therewith as discussed in column 3, line 62 through column 4, line 8; a display (16) to display data comprising a playlist indicating music data files to be played (abstract); an input device (14) operable by the user to select identification data associated with desired music data files for the playlist as discussed in column 4, lines 60-64; a processor (50) responsive to the input device to select the music data files for the playlist based on the user selected identification data; a converter to receive the selected music data files and convert the selected music data files to audio data as discussed in column 4, lines 2-5;

and an audio output driver (46) coupled to the converter to receive the audio data therefrom, the audio output driver further having an output and providing analog signals to the output for connection to an audio output device (52).

As recited in claims 2 and 13, Winsky et al. disclose the system, wherein the data structure contains music data files having different data format types as discussed in column 3, line 66 through column 4, line 5, wherein MIDI is preferably used; which indirectly infers that other formats may be used.

As recited in claims 3 and 14, Winsky et al. disclose the system, wherein the data associated with the stored music data files comprises song names and the display displays the song names, the user manually generating the playlist by operating the user input device to select song names and the processor generating the playlist based on the selected song names as discussed in the abstract.

Winsky et al. do not disclose a CODEC as the converter. However, CODECs are well known in the art for converting music data files into audio data. Winsky et. Al. further do not disclose metatags nor a plurality of data types.

However with respect to claims 4-8, 15, 16, and 19, Official Notice is taken with regards to it being well known in the art to use Codecs as converters and Metatags for data filing.

As recited in claim 9, Winsky discloses the system comprising a selection data structure wherein the playlist is stored for subsequent use as discussed in column 4, lines 27-35.

As recited in claim 10, Winsky et al. disclose the system, wherein the processor alters the stored playlist and wherein the altered playlist is stored for subsequent use as discussed in column 4, lines 50-56.

As recited in claims 11, 17, and 20, Winsky et al. disclose the system, wherein the processor is responsive to the input device to select music data files based on user-selection of a plurality of identification data associated with the music data files as discussed in column 4, lines 27-31 and lines 60-64.

It would have obvious to one of ordinary skill in the art at the time of the invention to utilize the well known teachings of a codec and metatags with the teachings of Winsky et al., because teachings only provide a means for accomplishing task which are accomplished through the apparatus, wherein the data files are obviously converted to audio data to be played through the speaker and the songs are selected by identification methods which are the same purpose of the metatags.

Allowable Subject Matter

3. Claim 6 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Burrows is cited as pertinent, because it discloses most of the features of the present invention and specifically discloses the use of a plurality of data types, a battery, and etc...

Response to Arguments

Applicant's arguments filed 05/09/2006 have been fully considered but they are not persuasive.

The applicant argues that Winsky et al. do not disclose a playlist nor a display for providing music selections. However, as disclosed in the abstract, Winsky et al. clearly disclose the selection of a list of songs retrieved from a database and provided on a display for selection thereof. Applicant's arguments are for this basis. The examiner disagrees and the rejection remains.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marlon T. Fletcher whose telephone number is 571-272-2063. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lincoln Donovan can be reached on 571-272-1988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MTF
2/10/2007


Marlon Fletcher
Primary Examiner